

1.

**(A) Explain the criteria governing the decision to prosecute by the CPS.**

**(B) Critically consider the reasons for the establishment of the criminal defense service.**

(A)

The functions of the CPS are to be involved in all aspects of criminal prosecutions. The way in which they do this is by giving advice to the police on admissibility of evidence before any charges are brought to the person. They review all cases passed to them by the police and examine whether there is sufficient evidence to proceed with a prosecution and whether it is in the public interest to do so. The CPS is responsible for any case passed to them by the police. The CPS is also responsible for conducting prosecutions in the Magistrates courts. Lawyers working in the CPS as crown prosecutors normally handle these prosecutions. The CPS conduct cases in the Crown Court by either instructing an independent lawyer to act as a prosecuting counsel at court or as of April 2000 under the Access To Justice Act 1999, crown prosecutors with the appropriate qualifications can conduct the cases themselves.

The decision to prosecute is made by the CPS. Each case goes through a series of tests. The way this happens is the CPS receives the papers. A review of the case is then made and scrutinised under the question “should the prosecution continue?” To answer this question they put the case through two tests, the Evidential test and the Public interest test.

The evidential test, crown prosecutors must be satisfied that there is enough evidence to provide a “realistic” prospect of conviction against each defendant on each charge. The crown prosecutor must consider what the defence will be and how it is likely to effect the prosecutions case. A realistic prospect of conviction is an objective test. This means that a jury or bench of magistrates, properly directed with the law, is more likely than not to convict the defendant of the charge alleged. The objective test is a separate test from the one that the criminal courts themselves must apply. The CPS must consider whether the evidence can be used and is reliable i.e. is it likely that the evidence will be excluded by the court e.g. confession hearsay. Is a confession reliable because of a

person's age, intelligence or level of understanding. What about the defendant's identity will be questioned, if anything.

The public interest test, the more serious the offence, the more likely it is a prosecution will be needed in the public interest. A prosecution will be needed if a conviction is likely to result in a significant sentence. If violence or a weapon was used. the offence was committed against a person serving the public i.e. police. The defendant was in a position of authority i.e. Judge. The defendant was a ringleader of a gang or if the offence was premeditated.

(B)

In 1981 the Royal commission on criminal procedure a.k.a "Phillips commission" was made due to the concern that the police in England and Wales had a dual role of detecting and prosecuting. In the report it stated that there was no uniform system of prosecuting in England and Wales. There was independent service needed to ensure consistency. Police were too close to the crime. There was a more objective approach needed and there was too many cases being taken to court and being thrown out. So a white paper was made and in 1985 the Prosecution of Offences Act was made. In 1986 the CPS was established as an independent prosecuting service.

The advantages of setting up the CPS was that there is more consistency in prosecutions in England and Wales. Prosecutions brought independently of the police would mean that there was less chance of a persons civil liberties being violated. Setting guidelines would mean that court time would be saved due to less cases being thrown out. However CPS officers may interpret the guidelines differently leading to inconsistency.

The disadvantages of the CPS are that many people today feel that the CPS is not very good because there are too many cases being discontinued. Each year the CPS discontinues 150,000 cases due to the fact that they do not meet the standards of one of the two tests. This in turn means that 150,000 criminals per year are walking away from their crimes unpunished. The CPS carried out a survey of the reasons why cases were discontinued, these figures were based upon the month of November 1993 and set out in the annual CPS report 1994. the reasons were divided up into four main catagories. **Insufficient evidence(43%), prosecution unable to proceed(17%), Not in the public**

**interest to proceed(31%) and defendants produced documents for the first time in court(9%).**

In general the CPS is a good system in that it stops the police interfering too much with the case, for instance withholding evidence. Police may be subjective on whether or not to prosecute in cases. Because of the problems and criticisms of the CPS, a review was established by the attorney general under the Right Honorable Sir Iain Glidewell retired judge. The report was to look at the structure and organization of the CPS and to consider possible changes in the system. This suggests that if the attorney general thinks there is something wrong with the cps then, there really must be something wrong with it i.e. the massive numbers of discontinued cases. When the report was completed some 75 recommendations were made about the way the CPS was running. One of the main recommendations was that there was, “clearly a matter for concern” that 1 in 8 suspects charged by the police later had the cases thrown out by the CPS.

The CPS in inevitably putting criminals back on to the streets the police are trying to make safer. Creating more opportunities for these people to commit crimes against the general public.

p.s. it's 12:30 at night and I've worked on this all night so I think its **REALLY** good, night, night!